

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO.:**

**MONICA MOSQUERA and  
HECTOR HOYOS,**

*Plaintiff,*

vs.

**WILLIAM BARR**; in his official capacity as Acting Attorney General of the United States of America;  
**KEVIN McALEENAN**, in his official capacity as Secretary, U.S. Department of Homeland Security; L.  
**FRANCIS CISSNA**, in his official capacity as Director, U.S. Citizenship and Immigration Services;

*Defendants.*

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**COMPLAINT UNDER FREEDOM OF INFORMATION ACT**

**I. NATURE OF ACTION**

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C §552, for injunctive and declaratory relief and seeking the disclosure and release of agency records pertaining to Plaintiffs Monica Mosquera and Hector Hoyos, improperly withheld by the Defendants United States Department of Homeland Security (“DHS”), United States Citizenship and Immigration Services (“USCIS”), (collectively, “defendants”). On October 5, 2018, under control number NRC2018148462, plaintiff Monica Mosquera sought records related to any/all documents in her alien file, including a copy of the I-130 Petition for Alien Relative she filed on behalf of her ex-spouse, Hector William Hoyos Rivera in or around 1996. On

February 16, 2019, the National Records Center (“NRC”) issued Ms. Mosquera her FOIA results for NRC2018148462 in the form of a 48 page response. **Exhibit B.** Although this response included a copy of her 1994 N-400 Naturalization Application<sup>1</sup> listing Hector Hoyos as her ex-husband, it did not include a copy of the I-130 Petition she submitted on her ex-husband’s behalf. *Id.*, pg. 6-10.

2. On April 4, 2019, Plaintiff Mosquera appealed the NRC’s response to her FOIA request to USCIS and specifically requesting a copy of the I-130 Petition for Alien Relative she filed on for her ex-spouse Hector Hoyos in or around 1996, control no. AAP2019500117. On May 29, 2019, USCIS responded to plaintiff’s appeal stating they were “unable to find any [petition] receipt filed by Ms. Mosquera for Hector William Hoyos.” **Exhibit C.**
3. The inexistence or unavailability of these records is unlikely: in addition to Mr. Hoyos’ appearance on plaintiff’s 1995 naturalization application, Mr. Hoyos’ own 2016 FOIA request no. NRC2016005656, for his alien file includes the Adjustment of Status Interview the couple attended together on June 24, 1997 at the INS office in Newark, New Jersey, on the basis of Ms. Mosquera’s petition for him. **Exhibit D.** Plaintiffs seek a copy of this I-130 Petition so that Mr. Hoyos can exercise his statutory right and due process rights to apply for adjustment of status under section 245(i) of the Immigration and Nationality Act. 8 U.S.C. § 1255(i). U.S. Cons. Amend. V.
4. Therefore, for the reasons stated herein, defendants have violated FOIA by failing to disclose the requested documents, and unlawfully withholding the requested information. Plaintiffs now ask that this Court enter a declaratory judgment in their favor and order defendants to respond to the request to disclose all responsive records improperly withheld in this case.

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<sup>1</sup> The Immigration and Nationality Service approved Ms. Mosqueda’s N-400 application on April 30, 1996.

## **II. JURISDICTION AND VENUE**

5. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §552 (a) (4) (B). This Court also has jurisdiction over this action pursuant as a federal question under to 28 U.S.C. §1331. This Court has the authority to grant declaratory relief pursuant to Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* Venue is proper under in the district under 5 USC §552 (a) (4) (B).

## **III. PARTIES**

6. Plaintiff Monica Mosquera is a native of Colombia and Citizen of the United States living in Miami-Dade County. Ms. Mosquera is the ex-spouse of co-plaintiff Hector Hoyos. Her alien number is 091-536-704.
7. Plaintiff Hector Hoyos is a native and citizen of Colombia living in Miami-Dade County. Mr. Hoyos is the ex-spouse of co-plaintiff Monica Mosquera. His alien registration number is 027-541-559.
8. The defendant, William Barr, is sued in his official capacity as Acting Attorney General of the United States of America. As U.S. Attorney General, he is generally charged with enforcement of the Immigration and Nationality Act and is further authorized to delegate such powers and authority to subordinate employees of the Department of Justice (“DOJ”). 8 U.S.C. § 1103(a). USCIS is an agency within the DOJ to whom the Attorney General's authority has in part been delegated, and is subject to the Attorney General's supervision.
9. The defendant, Kevin McAleenan, is sued in his official capacity as Secretary of the Department of Homeland Security (“DHS”). As Secretary of DHS, Mr. McAleenan is responsible for administration and enforcement of the immigration laws of the United States.

10. The defendant, L. Francis Cissna, is sued in his official capacity as Director of USCIS. As Director of USCIS, Mr. Cissna is responsible for the overall administration of USCIS and the implementation of the immigration laws of the United States.
11. The defendant, Matthew D. Emrich, is sued in his official capacity as the Associate Director of the FDNS of USCIS, which is ultimately responsible for determining whether individuals filing applications for immigration benefits pose a threat to national security, public safety, or the integrity of the nation's legal immigration system.

#### **IV. STATUTORY FRAMEWORK**

12. FOIA promotes open government by providing every person with a right to request and receive federal agency records. 5 U.S.C. §552 (a)(3)(A).
13. In furtherance of its purpose to encourage open government, FOIA imposes strict deadlines on agencies to provide responsive documents to FOIA requests. *Id.* §552 (a)(6)(A).
14. An agency must comply with a FOIA request by issuing a determination within 20 business days after receipt of the request. *Id.* §552 (a)(6)(A)(i).
15. An agency may be entitled to one ten-day extension of time to respond to a request if it provides written notice to the requester explaining that "unusual circumstances" exist that warrant additional time. *Id.* §552 (a)(6)(B).
16. An agency must immediately notify the requester of its determination whether to comply with a request, and the reasons for it, and of the right to such person to appeal an adverse determination. *Id.* §552 (a)(6)(A)(i).
17. An agency's failure to comply with any timing requirements is deemed constructive denial and satisfies the requester's requirement to exhaust administrative remedies. *Id.* § 552(a)(6)(C)(i).

18. A FOIA requester who exhausts administrative remedies may petition the court for injunctive and declaratory relief from the agency's continued withholding of public records. *Id* § 552(a)(4)(B).

**V. STATEMENT OF FACTS**

19. On January 20, 2016, plaintiff Hector Hoyos by and through his then retained counsel submitted a FOIA request for his entire alien file and his FOIA response from defendants, FOIA case no. NRC2016009999. Defendants response was received by plaintiff sometime in 2016. **Exhibit D.**

20. This response included a 116 page response, with 35 pages withheld entirely. **Exhibit D.**

21. Page 36 of FOIA response NRC2016009999 includes a copy of the adjustment interview Mr. Hoyos attended with Mosquera on June 24, 1997 at the INS office in Newark, New Jersey, on the basis of Ms. Mosquera's petition for him. The preceding five pages of the FOIA response are withheld entirely. **Exhibit D – NRC2016005656 FOIA Cover Letter and pertinent excerpts from response (pg. 31-42) for Hector Hoyos;**

22.

23. Mr. Hoyos FOIA response also includes a copy of the sworn statement Mr. Hoyos gave as to his marriage with Ms. Mosquera on June 24, 1997 at the INS office in Newark, New Jersey. **Exhibit D, pg. 39-40.**

24. FOIA response NRC2016009999 does not include a copy of the I-130 Petition filed on his behalf by his ex-wife Monica Mosquera in or around 1996, the petition upon which he received the June 24, 1997 INS interview.

25. On October 5, 2018, Plaintiff Monica Mosquera sought records related to any/all documents in her alien file, including a copy of her I-130 Petition for Alien Relative filed on behalf of

her ex-spouse, Hector William Hoyos Rivera in or around 1996, under control number NRC2018148462. **Exhibit A.**

26. On February 16, 2019, the National Records Center (“NRC”) issued Ms. Mosquera FOIA results for NRC2018148462 in the form of a 48 page response. **Exhibit B.**

27. Although this response included a copy of her 1994 N-400 Naturalization Application<sup>2</sup> listing Hector Hoyos as her ex-husband, it did not include a copy of the I-130 Petition she submitted on her ex-husband’s behalf in or around 1996.

28. On or around March 23, 2019, Ms. Mosquera appealed regarding the action by NRC relating to her FOIA request on September 26, 2018.

29. On April 4, 2019, Plaintiff Mosquera appealed the NRC’s response to her FOIA request to USCIS and specifically requesting a copy of the I-130 Petition for Alien Relative she filed on for her ex-spouse Hector Hoyos in or around 1996, control no. AAP2019500117.

30. On May 29, 2019, USCIS responded to plaintiff’s appeal stating they were “unable to find any [petition] receipt filed by Ms. Mosquera for Hector William Hoyos.” **Exhibit C.**

31. USCIS is an “agency” within the meaning of 5 U.S.C. § 552(f)(1) and therefore must comply with the nondiscretionary statutory requirements of FOIA.

32. Plaintiff has a right of prompt access to the requested records under 5 USC §552 (a) (3) (A) and the USCIS, has wrongfully withheld the sought-after documents.

## **VI. STATEMENT OF CLAIMS**

### **COUNT I: Failure to Produce Responsive Records**

33. Plaintiff re-alleges and incorporates the foregoing paragraphs as if set forth in full.

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<sup>2</sup> The Immigration and Nationality Service approved Ms. Mosqueda’s N-400 application on April 30, 1996.

34. Defendants failed to make reasonable efforts to search for records responsive to the Request, in violation of Plaintiff's rights under FOIA, including but not limited to 5 U.S.C. § 552(a)(3).
35. Defendants failed to disclose and produce any records responsive to the Request, in violation of Plaintiff's rights to those records under FOIA, including but not limited to 5 U.S.C. § 552(a)(3)(A).
36. Defendants failed to disclose and produce records responsive to the Request without a legal basis for withholding such records, in violation of FOIA, including but not limited to 5 U.S.C. §§ 552(a)(3)(A) and (6)(A).
37. Plaintiff is entitled to their reasonable attorneys' fees and costs under 5 U.S.C. § 552(a)(4)(E).

#### **REQUESTED RELIEF**

Wherefore, Plaintiff prays that this Court:

1. Declare, pursuant to its authority under 28 U.S.C. § 2201, that Defendants violated FOIA by unlawfully withholding the requested records;
2. Order Defendants to conduct a reasonable search for the requested records, and to disclose them to Plaintiff in their entireties and make copies available to Plaintiff;
3. Provide for expeditious proceedings in this action;
4. Award Plaintiff costs and reasonable attorney's fees incurred in this action; and
5. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

s/Anthony Dominguez

Anthony Dominguez, Esq.

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October 4, 2019

Date



**EXHIBIT LIST**

**Exhibit A – Copy of FOIA Acknowledgment Letter, NRC2018148462, February 16, 2019;**

**Exhibit B – Copy of FOIA Response, NRC2018148462;**

**Exhibit C – Copy of FOIA Appeal Acknowledgment Letter, AAP2019500117, May 29, 2019;**

**Exhibit D – NRC2016005656 FOIA Cover Letter and pertinent excerpts from response (pg. 31-42) for Hector Hoyos;**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on October 4, 2019, I electronically filed the forgoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

s/Anthony Dominguez  
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October 4, 2019  
Date